



4000-01-U

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of decision.

SUMMARY: The Department of Education (Department) gives notice that on September 18, 2010, an arbitration panel rendered a decision in the matter of John Bell, et al. v. New Jersey Commission for the Blind and Visually Impaired, Case no. R-S/07-14.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Mary Yang, U.S. Department of Education, 400 Maryland Avenue, SW, room 5162, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-6327. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

SUPPLEMENTARY INFORMATION: This arbitration panel was convened by the Department under 20 U.S.C. 107d-1(a), after receiving a complaint from the Complainant, John Bell. Under section 6(c) of the Randolph-Sheppard Act (Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the Federal Register a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

John Bell (Complainant) alleged violations by the New Jersey Commission for the Blind and Visually Impaired, the State licensing agency (SLA), under the Act and implementing regulations in 34 CFR part 395. Complainant alleged that the SLA violated the Act, the implementing regulations and the New Jersey Administrative Code concerning Complainant's management of a facility comprised of laundry equipment and vending machines at the Fairton Federal Correction Institution (Fairton) operated by the Federal Bureau of Prisons (BOP) at Fairton, New Jersey.

Specifically, Complainant alleged that the SLA unlawfully (1) entered into an "intergovernmental agreement" with BOP rather than a "permit" for the Fairton facility; (2) allowed BOP to collect 15 percent of

Complainant's net sales, as opposed to net profit; (3) allowed BOP to improperly change the rate charged for laundry services; (4) failed to pay the cost of replacing certain laundry machines in 2003 and/or failed to reimburse Complainant for \$48,000 for the lease purchase agreement he signed to replace the laundry machines himself; (5) required Complainant to pay the first \$200 in repair costs for each machine breakdown; and (6) failed to provide Complainant with a State fair hearing.

Complainant requested that the arbitration panel grant the following relief: (1) damages of approximately \$440,000; (2) an order directing the SLA to file an arbitration against the BOP regarding the 15 percent that Complainant paid to BOP; (3) a recommendation from the panel to the Secretary of Education that the New Jersey Commission for the Blind and Visually Impaired be removed as the SLA under the Act based upon its failure to provide Complainant with a full State fair hearing; and (4) costs incurred in this proceeding, including reasonable attorney's fees.

Complainant filed for a State fair hearing of his complaint, which was held on October 23, 2007. The Administrative Law Judge (ALJ) set January 15, 2008, as the

date for the parties to submit post-hearing briefs.

However, prior to the decision, the SLA requested that the ALJ return the case to it. Complainant opposed the request, but the ALJ advised Complainant that under New Jersey law he was required to relinquish the case back to the SLA.

Subsequently, Complainant filed with the Department a request for Federal arbitration seeking an appeal of the State fair hearing decision. A Federal arbitration panel was convened on December 8 and December 9, 2009.

Synopsis of the Arbitration Panel Decision

After reviewing all of the testimony and evidence, the panel found that most of the grievances were time barred, either by operation of the 15-day time limit set forth in the New Jersey Administrative Code, the doctrine of latches, or both. The panel further determined that Complainant did not show that the SLA had violated the Act or the Federal and State implementing regulations. Accordingly, the panel majority concluded that Complainant was not entitled to any remedy with the exception of Complainant's claim for the costs, including reasonable attorney's fees, he incurred in the State evidentiary hearing.

However, with respect to the State fair hearing, the panel majority concluded that the SLA knew, or had reason to know, prior to the commencement of the ALJ hearing, that Complainant's case would require the ALJ to interpret two potentially conflicting Federal statutes and, as a result, that the ALJ might lack subject matter jurisdiction. Yet, the SLA allowed the ALJ hearing to take place and asked the ALJ to return the case after Complainant had submitted his post-hearing brief requiring significant time and resources to no avail. Thus, the panel majority ruled that fundamental principles of fairness require that the SLA reimburse Complainant for the costs expended by Complainant in the State fair hearing, including reasonable attorney's fees.

The panel also retained jurisdiction of this matter for the sole purpose of resolving any disputes regarding the amount the SLA must pay Complainant for those costs.

One panel member dissented in part and concurred in part. This panel member dissented from the panel's determination that the commission payment was neither timely protested by Complainant nor a violation of the Act but concurred with the panel majority regarding the SLA's reimbursement to Complainant for costs incurred in the

State fair hearing, including reasonable attorney's fees.

On January 11, 2011, the SLA sought reconsideration of the portion of the panel's award granting Complainant the costs he incurred in the State fair hearing, including reasonable attorney's fees.

The panel agreed to consider the SLA's motion and granted Complainant the opportunity to reply, which he did on or about March 2, 2011.

On March 25, 2011, the panel conferred via conference call. After reviewing the parties' motions including the legal authority cited, the panel unanimously denied the SLA's motion for reconsideration on the merits and affirmed its initial decision of September 18, 2010, to award Complainant his costs for the State fair hearing, including reasonable attorney's fees.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

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Dated: January 11, 2012

Alexa Posny,
Assistant Secretary
for Special Education and
Rehabilitative Services.

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